

MONDAY, MARCH 24, 2003

TWENTY-SECOND LEGISLATIVE DAY

CALL TO ORDER

The Senate met at 5:00 p.m., and was called to order by Mr. Speaker Wilder.

PRAYER

The proceedings were opened with prayer by James Vandiver of Tennessee Association of Homes and Services for the Aging, a guest of Senator Harper.

PLEDGE OF ALLEGIANCE

Senator Harper led the Senate in the Pledge of Allegiance to the Flag.

ROLL CALL

The roll call was taken with the following results:

Present 32

Senators present were: Atchley, Beavers, Bryson, Burchett, Burks, Clabough, Cohen, Cooper, Crowe, Crutchfield, Dixon, Ford, Fowler, Graves, Harper, Haynes, Henry, Herron, Jackson, Ketron, Kurita, Kyle, McLeary, McNally, Miller, Norris, Ramsey, Southerland, Trail, Walker, Williams and Mr. Speaker Wilder--32.

COMMUNICATION

March 24, 2003

Lt. Gov. John Wilder
1 LP
Nashville, TN 37243

Dear Gov. Wilder:

I will be unable to attend the session today due to illness. Please excuse my absence and have this letter spread upon the Senate Journal.

Respectfully,
/s/ Curtis Person, Jr.

APPROVED: Lieutenant Governor
John S. Wilder

HOUSE BILLS ON FIRST CONSIDERATION

The Speaker announced that the following House Bills were transmitted to the Senate and passed first consideration:

MONDAY, MARCH 24, 2003 -- 22ND LEGISLATIVE DAY

House Bill No. 68 -- Child Custody and Support -- Requires specific areas of instruction for premarital preparation course. Amends TCA Title 36, Chapter 6, Part 4.

House Bill No. 433 -- Education, Higher -- Provides that use of false academic degree to obtain admission to or employment at institution of higher education in Tennessee is Class A misdemeanor. Amends TCA Title 39, Chapter 17, Part 1 and Title 49, Chapter 7, Part 1.

House Bill No. 841 -- Evidence -- Permits subpoenaed telephone records to be transmitted to law enforcement officials by telephone or facsimile. Amends TCA Section 24-7-116.

SENATE BILLS ON SECOND CONSIDERATION

The Speaker announced that the following bills passed second consideration and were referred to the appropriate committee:

Senate Bill No. 2001 referred to Committee on Government Operations.

Senate Bill No. 2002 referred to Committee on Government Operations.

Senate Bill No. 2003 held on desk.

INTRODUCTION OF RESOLUTIONS

The Speaker announced the following resolutions were filed for introduction. Pursuant to Rule 21, the resolutions lie over.

Senate Joint Resolution No. 192 by Senator Burks.
Memorials, Personal Achievement -- Shirley Vess, Ms. Tennessee Sr. America.

Senate Joint Resolution No. 193 by Senator Bryson.
Memorials, Professional Achievement -- WAKM, 50th anniversary.

Senate Joint Resolution No. 194 by Senators Burchett, Atchley and McNally.
Memorials, Public Service -- Oakwood Baptist Church, 100th anniversary.

Senate Resolution No. 24 by Senator Harper.
Memorials, Professional Achievement -- The French Confection.

RESOLUTIONS LYING OVER

House Joint Resolution No. 158 -- Memorials, Professional Achievement -- Clinton School System, Teachers of the Year.

The Speaker announced that he had referred House Joint Resolution No. 158 to Committee on Calendar.

Senate Joint Resolution No. 191 -- Memorials, Death -- Dr. Howell H. Sherrod.

The Speaker announced that he had referred Senate Joint Resolution No. 191 to Committee on Calendar.

CONSENT CALENDAR NO. 1

Senate Joint Resolution No. 186 -- Memorials, Academic Achievement -- Garrett Davis Gifford, Valedictorian, Gordonsville High School.

Senate Joint Resolution No. 187 -- Memorials, Academic Achievement -- Kelli Angel, Salutatorian, Gordonsville High School.

Senate Joint Resolution No. 189 -- Memorials, Professional Achievement -- Thomas A. Varlan.

Senate Resolution No. 22 -- Memorials, Public Service -- Brittany McGruder, Prudential Spirit of Community Award.

Senate Resolution No. 23 -- Memorials, Academic Achievement -- Quinten Terrell Barlow, National Dean's List.

Senator Crowe moved that all Senate Resolutions and Senate Joint Resolutions be adopted, which motion prevailed by the following vote:

Ayes 32
Noes 0

Senators voting aye were: Atchley, Beavers, Bryson, Burchett, Burks, Clabough, Cohen, Cooper, Crowe, Crutchfield, Dixon, Ford, Fowler, Graves, Harper, Haynes, Henry, Herron, Jackson, Ketron, Kurita, Kyle, McLeary, McNally, Miller, Norris, Ramsey, Southerland, Trail, Walker, Williams and Mr. Speaker Wilder--32.

A motion to reconsider was tabled.

CONSENT CALENDAR NO. 2

Senate Bill No. 941 -- Sunset Laws -- Compact on probation and parole, June 30, 2009. Amends TCA Title 4, Chapter 29 and Title 40, Chapter 28.

Senate Bill No. 946 -- Sunset Laws -- Advisory committee for acupuncture, June 30, 2005. Amends TCA Title 4, Chapter 29 and Title 63, Chapter 6.

Senate Bill No. 430 -- Law Enforcement -- Permits police officer working private security to wear uniform of officer's primary jurisdiction, if jurisdiction has authorized and assumed responsibility for wearing such uniform.

Senator Crowe moved that all Senate Bills be passed on third and final consideration, which motion prevailed by the following vote:

Ayes 32
Noes 0

Senators voting aye were: Atchley, Beavers, Bryson, Burchett, Burks, Clabough, Cohen, Cooper, Crowe, Crutchfield, Dixon, Ford, Fowler, Graves, Harper, Haynes, Henry, Herron, Jackson,

MONDAY, MARCH 24, 2003 -- 22ND LEGISLATIVE DAY

Ketron, Kurita, Kyle, McLeary, McNally, Miller, Norris, Ramsey, Southerland, Trail, Walker, Williams and Mr. Speaker Wilder--32.

A motion to reconsider was tabled.

CALENDAR

Senate Resolution No. 16 -- General Assembly, Confirmation of Appointment -- Dr. Jay P. Sellick, POST Commission.

Senate Resolution No. 16 was adopted by the following vote:

Ayes	32
Noes	0

Senators voting aye were: Atchley, Beavers, Bryson, Burchett, Burks, Clabough, Cohen, Cooper, Crowe, Crutchfield, Dixon, Ford, Fowler, Graves, Harper, Haynes, Henry, Herron, Jackson, Ketron, Kurita, Kyle, McLeary, McNally, Miller, Norris, Ramsey, Southerland, Trail, Walker, Williams and Mr. Speaker Wilder--32.

A motion to reconsider was tabled.

Senate Bill No. 149 -- Boards and Commissions -- Increases membership of tax study commission to include one member who is African-American and three members who are female. Amends TCA Title 67, Chapter 10, Part 1.

On motion, Senate Bill No. 149 was made to conform with **House Bill No. 1258**.

On motion, House Bill No. 1258, on same subject, was substituted for Senate Bill No. 149.

Senator Harper moved that Amendment No. 1 be withdrawn, which motion prevailed.

Senator Fowler moved to amend as follows:

AMENDMENT NO. 2

AMEND by deleting all language after the enacting clause, and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 10, as amended by deleting Part 1.

SECTION 2. From the state funds saved from implementation of Section 1, one-hundred sixty-five thousand dollars (\$165,000) shall be allocated to the Department of Human Services for the sole purpose of funding home-based services for the disabled and any remaining funds shall be deposited within the state's general fund.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. This act shall take effect upon becoming law, the public welfare requiring it.

Pursuant to Rule 39(3), Amendment No. 2 failed for the lack of a two-thirds majority by the following vote:

Ayes 11
Noes 20

Senators voting aye were: Beavers, Burchett, Cohen, Crowe, Fowler, Ketron, McNally, Miller, Norris, Ramsey and Southerland--11.

Senators voting no were: Atchley, Bryson, Burks, Clabough, Crutchfield, Dixon, Ford, Graves, Harper, Haynes, Henry, Herron, Jackson, Kurita, Kyle, McLeary, Trail, Walker, Williams and Mr. Speaker Wilder--20.

Thereupon, **House Bill No. 1258** passed its third and final consideration by the following vote:

Ayes 28
Noes 1

Senators voting aye were: Atchley, Bryson, Burchett, Burks, Clabough, Cohen, Crowe, Crutchfield, Dixon, Ford, Fowler, Graves, Harper, Haynes, Henry, Herron, Jackson, Ketron, Kurita, Kyle, McLeary, Miller, Ramsey, Southerland, Trail, Walker, Williams and Mr. Speaker Wilder--28.

Senator voting no was: Beavers--1.

A motion to reconsider was tabled.

Senate Bill No. 1472 -- Sunset Laws -- Department of revenue, June 30, 2007. Amends TCA Title 4, Chapter 29 and Title 4, Chapter 3.

Senator Harper moved to amend as follows:

AMENDMENT NO. 1

AMEND by deleting in Section 2 of the printed bill the language "Tennessee Code Annotated, Section 4-29-228(a)" and by substituting instead the language "Tennessee Code Annotated, Section 4-29-230(a)".

The amendment was adopted by the following vote:

Ayes 31
Noes 0

Senators voting aye were: Atchley, Beavers, Bryson, Burchett, Burks, Clabough, Cohen, Crowe, Crutchfield, Dixon, Ford, Fowler, Graves, Harper, Haynes, Henry, Herron, Jackson, Ketron, Kurita, Kyle, McLeary, McNally, Miller, Norris, Ramsey, Southerland, Trail, Walker, Williams and Mr. Speaker Wilder--31.

MONDAY, MARCH 24, 2003 -- 22ND LEGISLATIVE DAY

Thereupon, **Senate Bill No. 1472**, as amended, passed its third and final consideration by the following vote:

Ayes 31
Noes 0

Senators voting aye were: Atchley, Beavers, Bryson, Burchett, Burks, Clabough, Cohen, Crowe, Crutchfield, Dixon, Ford, Fowler, Graves, Harper, Haynes, Henry, Herron, Jackson, Ketron, Kurita, Kyle, McLeary, McNally, Miller, Norris, Ramsey, Southerland, Trail, Walker, Williams and Mr. Speaker Wilder--31.

A motion to reconsider was tabled.

Senate Bill No. 1901 -- Mortgages -- Revises residential lending, brokerage and servicing act with respect to home improvement contractors and other persons who supply materials and render services in improvement of real property. Amends TCA Title 45.

Senator Clabough moved to amend as follows:

AMENDMENT NO. 1

AMEND by deleting in its entirety all language following the enacting clause and by substituting instead the following language:

SECTION 1. Tennessee Code Annotated, Section 45-13-103(c), is amended by deleting subdivision (4) in its entirety.

SECTION 2. Tennessee Code Annotated, Section 45-13-103(a), is amended by adding the following language at the end of the subsection:

Provided, that no contractor or home improvement contractor or other person who supplies materials and renders services in the improvement of real property shall engage in the business of making mortgage loans or of being a mortgage loan servicer or mortgage loan broker in this state.

SECTION 3. Tennessee Code Annotated, Title 45, Chapter 13, Part 1, is amended by adding the following language as a new, appropriately designated section:

45-13-123. (a) A licensee or registrant shall not make any payments to a contractor or home improvement contractor from proceeds of a mortgage loan for home improvement other than:

(1) In the form of an instrument that is payable to the borrower or jointly to the borrower and the contractor or home improvement contractor; or

(2) At the election of the borrower by a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the licensee or registrant, and the contractor or home improvement contractor prior to the date of payment.

(b) A licensee or registrant shall not permit a contractor or home improvement contractor to be a cosigner or to act as a guarantor for a mortgage loan for home improvement.

(c) As used in this section, "mortgage loan for home improvement" means a consumer credit mortgage loan transaction involving property located within this state regardless of the amount of the loan.

(d) The commissioner is authorized to impose a civil penalty in an amount not to exceed twenty-five thousand dollars (\$25,000) for each violation of this section after notice and an opportunity for a hearing.

SECTION 4. Tennessee Code Annotated, Section 62-37-112, is amended by adding the following language as a new, appropriately designated subsection:

(14)(A) Having a controlling ownership interest in the lender providing a mortgage loan for home improvement for the work being performed by the home improvement contractor; or

(B) Being a cosigner or acting as a guarantor for a mortgage loan for home improvement.

As used in this subsection, "mortgage loan for home improvement" shall have the same meaning as defined in § 45-13-123(c).

SECTION 5. Tennessee Code Annotated, Title 62, Chapter 37, Part 1, is amended by adding the following language as a new, appropriately designated section:

62-37-135. (a) The board is authorized to impose a civil penalty in an amount not to exceed twenty-five thousand dollars (\$25,000) per violation for a violation of § 62-37-112(3), (4) or (14) after notice and an opportunity for a hearing. Such penalty shall be in addition to any other penalty authorized pursuant to this part.

(b) In addition to the civil penalty authorized pursuant to subsection (a), a violation of § 62-37-112 (3), (4) or (14) shall be construed to constitute an unfair or deceptive act or practice affecting the conduct of trade or commerce under the Tennessee Consumer Protection Act, and as such the private right of action remedy under such act shall be available to any person who suffers an ascertainable loss of money or property, real, personal, or mixed, or any other article, commodity, or thing of value wherever situated as a result of such violation.

SECTION 6. This act shall take effect upon becoming a law, the public welfare requiring it.

On motion, the amendment was adopted.

Thereupon, **Senate Bill No. 1901**, as amended, passed its third and final consideration by the following vote:

Ayes	31
Noes	0

MONDAY, MARCH 24, 2003 -- 22ND LEGISLATIVE DAY

Senators voting aye were: Atchley, Beavers, Bryson, Burchett, Burks, Clabough, Cohen, Crowe, Crutchfield, Dixon, Ford, Fowler, Graves, Harper, Haynes, Henry, Herron, Jackson, Ketron, Kurita, Kyle, McLeary, McNally, Miller, Norris, Ramsey, Southerland, Trail, Walker, Williams and Mr. Speaker Wilder--31.

A motion to reconsider was tabled.

Senator Cooper moved that **Senate Bill No. 662** be placed on the calendar for Thursday, March 27, 2003, which motion prevailed.

RECALL OF BILL

On motion of Mr. Speaker Wilder, **Senate Bill No. 882** was recalled from the Committee on Commerce, Labor and Agriculture.

REFERRAL

On motion of Mr. Speaker Wilder, Senate Bill No. 882 was referred to the Committee on Judiciary.

MOTION

On motion of Senator Dixon, his name was added as sponsor of **Senate Bill No. 1004**.

On motion, all Senators' names were added as sponsors of **Senate Joint Resolution No. 189**.

On motion of Senators Herron, Trail and Kyle, their names were added as sponsors of **Senate Bill No. 1472**.

On motion of Senator Burks, her name was added as sponsor of **Senate Bill No. 1004**.

On motion of Senator Henry, his name was added as prime sponsor of **Senate Bill No. 1944**.

ENGROSSED BILLS

March 24, 2003

MR. SPEAKER: Your Chief Engrossing Clerk begs leave to report that we have carefully examined Senate Bills Nos. 430, 941, 946, 1472 and 1901; and Senate Joint Resolutions Nos. 186, 187 and 189; and find same correctly engrossed and ready for transmission to the House.

PATRICK W. MERKEL,
Chief Engrossing Clerk.

MESSAGE FROM THE HOUSE

March 24, 2003

MR. SPEAKER: I am directed to return to the Senate, Senate Bills Nos. 115 and 1691, substituted for House Bills on same subjects and passed by the House.

BURNEY T. DURHAM,
Chief Clerk.

MESSAGE FROM THE HOUSE

March 24, 2003

MR. SPEAKER: I am directed to return to the Senate, Senate Bills Nos. 187 and 541, substituted for House Bills on same subjects and passed by the House.

BURNEY T. DURHAM,
Chief Clerk.

MESSAGE FROM THE HOUSE

March 24, 2003

MR. SPEAKER: I am directed to transmit to the Senate, House Bills Nos. 65, 1286, 1771, 1810 and 2069; passed by the House.

BURNEY T. DURHAM,
Chief Clerk.

MESSAGE FROM THE HOUSE

March 24, 2003

MR. SPEAKER: I am directed to return to the Senate, Senate Joint Resolutions Nos. 126, 173, 174, 175, 176, 177, 178, 182, 183 and 190; concurred in by the House.

BURNEY T. DURHAM,
Chief Clerk.

MESSAGE FROM THE HOUSE

March 24, 2003

MR. SPEAKER: I am directed to transmit to the Senate, House Joint Resolutions Nos. 10, 105, 161, 162, 163, 165, 166, 168, 169, 170, 171, 172, 173, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187 and 188; adopted, for the Senate's action.

BURNEY T. DURHAM,
Chief Clerk.

ENROLLED BILLS

March 24, 2003

MR. SPEAKER: Your Chief Engrossing Clerk begs leave to report that we have carefully compared Senate Bills Nos. 347 and 1528, and find same correctly enrolled and ready for the signatures of the Speakers.

PATRICK W. MERKEL,
Chief Engrossing Clerk.

ENROLLED BILLS

March 25, 2003

MR. SPEAKER: Your Chief Engrossing Clerk begs leave to report that we have carefully compared Senate Resolutions Nos. 16, 22 and 23; and Senate Joint Resolutions Nos. 126, 173, 174, 175, 176, 177, 178, 182, 183 and 190; and find same correctly enrolled and ready for the signatures of the Speakers.

PATRICK W. MERKEL,
Chief Engrossing Clerk.

MONDAY, MARCH 24, 2003 -- 22ND LEGISLATIVE DAY

SIGNED

March 24, 2003

The Speaker announced that he had signed the following: Senate Bills Nos. 347 and 1528; and House Bills Nos. 1672, 2062 and 2066.

SIGNED

March 25, 2003

The Speaker announced that he had signed the following: Senate Resolutions Nos. 16, 22 and 23; and Senate Joint Resolutions Nos. 126, 173, 174, 175, 176, 177, 178, 182, 183 and 190.

MESSAGE FROM THE HOUSE

March 24, 2003

MR. SPEAKER: I am directed to return to the Senate, Senate Bills Nos. 347 and 1528, signed by the Speaker.

BURNEY T. DURHAM,
Chief Clerk.

MESSAGE FROM THE HOUSE

March 25, 2003

MR. SPEAKER: I am directed to return to the Senate, Senate Joint Resolutions Nos. 126, 173, 174, 175, 176, 177, 178, 182, 183 and 190; signed by the Speaker.

BURNEY T. DURHAM,
Chief Clerk.

REPORT OF CHIEF ENGROSSING CLERK

March 25, 2003

MR. SPEAKER: Your Chief Engrossing Clerk begs leave to report that we have transmitted to the Governor the following: Senate Bills Nos. 347 and 1528, for his action.

PATRICK W. MERKEL,
Chief Engrossing Clerk.

REPORT OF CHIEF ENGROSSING CLERK

March 25, 2003

MR. SPEAKER: Your Chief Engrossing Clerk begs leave to report that we have transmitted to the Governor the following: Senate Joint Resolutions Nos. 126, 173, 174, 175, 176, 177, 178, 182, 183 and 190; for his action.

PATRICK W. MERKEL,
Chief Engrossing Clerk.

MONDAY, MARCH 24, 2003 -- 22ND LEGISLATIVE DAY

MESSAGE FROM THE GOVERNOR

March 20, 2003

MR. SPEAKER: I am directed by the Governor to return herewith: Senate Joint Resolutions Nos. 139, 140 and 170; with his approval.

ROBERT E. COOPER, JR.,
Counsel to the Governor.

MESSAGE FROM THE GOVERNOR

March 24, 2003

MR. SPEAKER: I am directed by the Governor to return herewith: Senate Bill No. 292; and Senate Joint Resolutions Nos. 48, 133, 134, 137, 138 and 172; with his approval.

ROBERT E. COOPER, JR.,
Counsel to the Governor.

MESSAGE FROM THE GOVERNOR

March 25, 2003

MR. SPEAKER: I am directed by the Governor to return herewith: Senate Joint Resolutions Nos. 128, 131, 132, 135, 136, 141, 143, 145, 146, 149, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 165, 166, 167, 169, 171 and 188; with his approval.

ROBERT E. COOPER, JR.,
Counsel to the Governor.

**REPORT OF COMMITTEE ON CALENDAR
CONSENT CALENDAR**

MR. SPEAKER: Your Committee on Calendar begs leave to report that we have met and set the following bills on the calendar for Wednesday, March 26, 2003: House Joint Resolution No. 158; and Senate Joint Resolutions Nos. 191 and 192.

This the 24th day of March, 2003.
CROWE, Chairperson.

REPORT OF COMMITTEE ON CALENDAR

MR. SPEAKER: Your Committee on Calendar begs leave to report that we have met and set the following bills on the calendar for Wednesday, March 26, 2003: Senate Bills Nos. 614, 1509, 1581, 1783, 1887, 154 and 200.

This the 24th day of March, 2003.
CROWE, Chairperson.

MONDAY, MARCH 24, 2003 -- 22ND LEGISLATIVE DAY

ADJOURNMENT

Senator Crutchfield moved the Senate adjourn until 3:00 p.m., Wednesday, March 26, 2003, which motion prevailed.